

**UNITED STATES DISTRICT COURT
NEW JERSEY DISTRICT COURT**

ADRIAN LIZANDRO LOJANO
NAULA,

Petitioner,

v.

KRISTI NOEM, in her capacity as
Secretary for the United States Department
of Homeland Security; JOHN
TSOUKARIS, Field Office Director of New
Jersey, Immigration and Customs
Enforcement, in his official capacity,
PAMELA BONDI, in her official capacity
as the Attorney General of the United
States,

Respondents.

Hon. Esther Salas U.S.D.J.

Civil Action No. 25-16700 (ES)

**PETITIONER'S REPLY BRIEF
IN SUPPORT OF THE
PETITION FOR WRIT OF HABEAS CORPUS**

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CONTROLLING OR MOST APPROPRIATE AUTHORITY

8 U.S.C. § 1225

8 U.S.C. § 1226

Caselaw Pertaining to Statutory Claim

Jennings v. Rodriguez, 583 U.S. 281 (2018)

PRELIMINARY STATEMENT

Adrian Lizandro Lojano Naula is a native and citizen of Ecuador (“Petitioner” or “Mr. Lojano Naula”). Mr. Lojano Naula last entered without inspection on April 22, 2014 in Texas. BP determined that he had unlawfully entered without being inspected or paroled, and detained Petitioner. On May 14, 2014, Petitioner passed the Credible Fear Interview. On May 29, 2024, Petitioner posted the \$7,500 bond and was released. Petitioner was released pursuant to INA 236. *See* Exhibit A Notice of Custody Determination. He was placed into removal proceedings. On November 20, 2023, the posted bond was cancelled. On October 9, 2025, the Petitioner was detained in a targeted operation. The Petitioner is detained at ERO El Paso Camp East Montana in Texas. Petitioner has never been arrested before and has no criminal history. The Immigration Judge denied bond holding that the Petitioner is subject to mandatory detention pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

Petitioner filed this habeas petition on October 17, 2025. ECF No. 1. On October 21, the Court issued an Order to Answer, directing Respondents to file an answer to the Petition by November 11. ECF No. 2. On October 28, Petitioner filed a motion for leave to file an amended petition. ECF 3. On November 4, the Court issued an Order to Answer, directing Respondents to file an answer to the Amended Petition by November 25. ECF 5. On November 20, the Respondents

notified the Court that Petitioner was transferred from Delaney Hall Detention Facility to El Paso Camp East Montana, El Paso, Texas. ECF 6.

For nearly thirty years, Respondents and the federal courts recognized that noncitizens who entered the United States without inspection and were apprehended years later were eligible for a bond hearing before an immigration judge under 8 U.S.C. § 1226(a). Petitioner has been denied a bond determination in Immigration Court because the Respondents advance a new statutory interpretation that defies the text, structure, and purpose of the Immigration and Nationality Act (INA), and reverses decades of consistent agency practice. The government's novel position mandates the detention, without a bond hearing, of millions of longtime residents of the United States. It is contrary to the plain language of the statute; Congress's intent and understanding of the detention statutes, expressed most recently in January 2025; long-standing agency practice; and the agency's conduct in this case. It is no surprise that, to the best of counsel's knowledge, this new interpretation has been squarely rejected by a majority of the federal courts to address this issue, including in *Rivera Zumba v. Bondi*, 2025 WL 2753496 (D.N.J., Sept. 26, 2025);¹ Many District Courts have rejected the holding of *Matter of Yajure Hurtado*. Some of the more than fifty district courts that have rejected the

¹ The one apparent exception, *Chavez v. Noem*, 2025 WL 2730228 (S.D. Cal. 2025), denied an ex parte temporary restraining order but has not issued a final judgment on the merits.

government's new interpretation are cited *infra* at I.² Multiple District Courts have ordered bond hearings or release and have held that 1226(a) authorizes detention. As court after court has held, § 1225 is a border inspection scheme that does not apply to noncitizens who were already residing in the United States when they were apprehended. Instead, § 1226(a) plainly applies. And those courts all rejected the government's argument that exhaustion is a barrier to habeas relief. This Court should grant Mr. Lojano Naula's petition and order Respondents to either immediately release him or hold a bond hearing.

ARGUMENT

I. Because § 1225 is not applicable, § 1226 Governs the Detention of Residents Like Mr. Lojano Naula.

The text, structure, and purpose of the INA all support Mr. Lojano Naula's argument that § 1226(a) governs his detention, and not § 1225(b)(1)(A). Respondents' reliance on *Castro v. U.S. Dep't of Homeland Sec.*, 835 F.3d 422, 425 (3d Cir.2016) is misplaced. Additionally, the determinative facts of the instant matter and the legal precedent cited by the Respondents is different.

Respondents cite and engage *Castro v. U.S. Dep't of Homeland Sec.*, 835 F.3d 422, 425 (3d Cir. 2016), but did not engage it thoroughly enough. First, the Petitioner here was released under INA Section 236, "released under bond in the

² See, e.g., *Echevarria v. Bondi*, No. CV-25-03252-PHX-DWL (D. Ariz. Oct. 3, 2025); *Vasquez v. Bostock*, 3:25-cv-05240-TMC (W.D. Wash. Sept. 30, 2025).

amount of \$7,500.00.” Exhibit A. This DHS document undercuts Respondents' argument. Now, DHS is stating that he is detained pursuant to a different statute. Second, *Castro* dealt with petitioners who were encountered, upon entry, by CBP, placed into Expedited Removal Proceedings, and detained until they were afforded a Credible Fear Interview. The petitioners failed their Credible Fear Interviews, and Immigration Judges upheld those findings. The petitioners were then referred to DHS for removal. The Third Circuit found that neither it nor the District Courts had jurisdiction to hear the petitioners' Habeas challenges under 8 USC § 1252. They concluded that they lacked jurisdiction. 8 USC § 1225(b)(1). *See Castro v. U.S. Dep't of Homeland Sec.*, 835 F.3d 422, 430 (3d Cir. 2016).

Here, the Petitioner is in a different position than the Petitioners in *Castro*, *Supra*. Unlike the petitioners in *Castro*, Petitioner passed his Credible Fear Interview and was placed into Removal Proceedings. Petitioner's factual pattern in this matter is not the same as the petitioners in *Castro* and thus should not be treated the same.

Petitioner was encountered immediately upon crossing the U.S./Mexico Border, as were the petitioners in *Castro*. Petitioner was issued an Expedited Order of Removal, like the petitioners in *Castro*. Unlike the petitioners in *Castro*, CBP decided to parole Petitioner into the United States after he passed his credible fear interview and he was placed into removal proceedings.

Respondents seek to set us back in time to April 22, 2014, when Petitioner was first encountered at the border and erase his release pursuant to INA 236. DHS' release decision from 2014 is based in sound law:

First, 8 USC § 1225(b)(1) refers to the “Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled.” On April 22, 2014, Petitioner had not been admitted or paroled into the United States, so this provision applied to him; since then, however, Petitioner has been paroled into the United States. *See* Form I-213. Petitioner is no longer arriving in the United States—he has been here for over eleven years.

In 8 USC § 1225(b)(1)(iii)(II), the Aliens described in the clause are set out clearly:

An alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph.

Petitioner has been paroled into the United States and has been physically present in the United States continuously for more than eleven years. The Petitioner is facing removal pursuant to a determination of inadmissibility issued by an immigration officer in 2025, not the one issued in 2014. For these reasons, 8 USC § 1225(b)(1) does not apply to him.

We would point this Honorable Court to *Rico-Tapia vs. Smith, et al.*, Case 1:25-cv-00379-SASP-KJM (October 10, 2025) out of the District of Hawaii. In *Rico-Tapia* the court dealt with an immigrant who entered the United States unlawfully on August 14, 2022, and was paroled into the country with a parole valid until October 14, 2022. He was placed into removal proceedings on December 27, 2022, under Section 240 of the INA. He then applied for asylum before the immigration court. On July 23, 2025, ICE moved to dismiss his proceedings, which was granted, and he was subjected to expedited removal. Rico-Tapia was then forcibly arrested and detained. While in detention, he passed his Credible Fear Interview and was returned to Removal Proceedings. ICE claimed he was subject to mandatory detention pursuant to § 1225(b)(1)(B)(ii).

After engaging both statutes Judge Park concluded, “As Section 1225(b) does not apply to aliens who are *already present in the country*, it does not apply to Rico-Tapia. At the time of his detainment in July 2025, Rico-Tapia was not seeking to “enter the country,” but rather, had already been present within the United States for nearly three (3) years.

Similarly in *Jimenez v. FCI Berlin, Warden*, 2025 WL 2639390 (D.N.H. Sept. 8, 2025), petitioner entered without inspection, was detained at the border, and placed in expedited removal. Petitioner failed the credible fear interview. However, an Immigration Judge reserved the asylum officer’s determination.

Petitioner was released from detention pursuant to an Order of Release on Recognizance. Petitioner was arrested with a warrant after a court hearing in 2025. The Court held 8 USC § 1225(b)(1) did not apply because Jimenez was no longer “arriving in the United States”.

In *dos Santos*, the petitioner was detained at the border and passed his credible fear interview. USCIS issued a Notice to Appear which was filed in immigration court. That terminated petitioner’s expedited removal proceedings under 8 USC § 1225(b)(1) and commenced standard removal proceedings against him. Petitioner was released on bond. However, the petitioner was arrested in 2025 pursuant to a warrant. The Court determined that petitioner’s detention was governed by 8 USC § 1226(a) because he was arrested on a warrant and previously released on bond under that statute. *dos Santos v. Noem*, 2025 WL 2370988 (D.Mass. Aug. 14, 2025)

Respondents’ claim that Petitioner is detained lawfully under 8 USC § 1225(b)(1) is not supported by the facts and the law in this matter. As Petitioner’s detention under § 1225(b)(1)(A) is unlawful under the INA and violates his procedural due process rights, and Respondents have not argued in the alternative that Petitioner should be detained under § 1226(a), the Court should not construe the record to authorize his continued detention on that basis. *See Bethancourt v. Soto*, No. 25-cv-16200 at 17 (D.N.J., Oct. 22, 2025).

Respondents cite *Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657, at *1 (E.D. Va. Aug. 5, 2025), which does find that immigrants detained pursuant to § 1225(b)(1)(B)(ii), those who initially received an expedited order of removal, passed a credible fear interview, and then were paroled, were subject to mandatory detention. We ask this court to give this decision little weight as it is conclusory and completely fails to engage the interplay of 1226(a) and 1225(b).

In *Lopez v. Lyons*, 2025 WL 3124116 (E.D. Cal. Nov. 7, 2025), petitioner was detained and released on his own recognition. Petitioner was taken into ICE custody over three years after the petitioner entered the country. The Court held, “Section 1225(b)(1) flatly does not apply to Petitioner as he has been present without a determination of inadmissibility within two years of Petitioner's entry. Respondents seek to categorize Petitioner's initial 2022 contact with immigration officials as a "determination of inadmissibility" for purposes of section 1225(b)(1). (See Opp'n at 6.) But the Order of Release on Recognizance specifically states that Petitioner was released pursuant to section 1226.2 (See ECF No. 2-2 at 10.) Thus, the claim that Petitioner should now be subject to expedited removal over three years after his initial entry into the United States when he was initially released under section 1226 is inconsistent with the facts and law.” See also *Rodriguez Vazquez v. Bostock*, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025) (Court granted summary judgment on behalf of a class of people without lawful status held at the

Northwest ICE Processing Center (1) who entered without inspection, (2) were “not apprehended upon arrival”, (3) “are not subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the noncitizen is scheduled for or requests a bond hearing.”

The BIA, in unpublished decisions, has agreed with the Petitioner. Appeal ID 5465822 (BIA April 25, 2024) (orders further consideration of whether respondent was subject to mandatory detention where record did not reflect whether he was initially given a credible fear interview or released on conditional or humanitarian parole) (Hunsucker, Petty, Clark); Appeal ID 5469827 (BIA March 28, 2024) (noncitizens granted parole under INA 212(d)(5) not subject to mandatory detention under Matter of M-S-, 27 I&N Dec. 509 (A.G. 2019)) (Borkowski). Exhibit B.

Finally, the Petitioner was arrested pursuant to a warrant. Exhibit C. The BIA has held that, “a Respondent detained pursuant to a warrant of arrest is subject to discretionary detention under INA 236 rather than mandatory detention under INA 235) (Malphrus, Liebowitz, Brown). Exhibit B.

A. District Courts Throughout The Country Have Rejected the Holding of Matter of Yajure Hurtado

Many District Courts have rejected the holding of *Matter of Yajure Hurtado*. They have not only ruled in favor of the Petitioner but have also held that the Court has jurisdiction. Recently, the *Ventura Martinez* District Court in the Western

District of Louisiana granted the Motion for Temporary Restraining Order and Preliminary Injunction. The Court rejected the holding of *Matter of Yujure Hurtado* and ordered Respondents to provide Petitioner with the ability to post bond. See *Ventura Martinez v. Trump*, 3:25-cv-01445 (W.D.La., Oct. 22, 2025). See, e.g., *Oliveira Gomes v. Hyde*, 2025 WL 1868299(D.Mass. July 7, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D.Mass. July 24, 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D.Mass. Aug. 14, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Doe v. Moniz*, 2025 WL 2576819 (D.Mass., Sept. 5, 2025); *Encarnacion v. Moniz*, No. 25-12237 (D.Mass., Sept. 5, 2025); *Sampiao v. Hyde*, 2025 WL 2607924 (D.Mass., Sept. 9, 2025); *Hilario Rodriguez v. Moniz*, No. 25-12358 (D.Mass., Sept. 18, 2025); *Chogllo Chafra v. Scott*, 2025 WL 2531027 (D.Me., Sept. 2, 2025); *Jimenez v. FCI Berlin, Warden*, 2025 WL 2639390 (D.N.H., Sept. 8, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y., Aug. 13, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y., Aug. 19, 2025); *Savane v. Francis*, 2025 WL 2774452 (S.D.N.Y., Sept. 28, 2025); *Luna Quispe v. Crawford*, 2025 WL 2783799 (E.D.Va., Sept. 29, 2025); *Rivera Zumba v. Bondi*, 2025 WL 2753496 (D.N.J., Sept. 26, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D.Md., August 24, 2025); *Hasan v. Crawford*, 2025 WL 2682255 (E.D.Va., Sept. 19, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D.La., Augt. 27, 2025); *Lopez Santos v. Noem*, 2025 WL 2642278 (W.D.La., Sept.11, 2025);

Lopez-Arevelo v. Ripa, 2025 WL 2691828 (W.D.Tex., Sept. 22, 2025); *Barrera v. Tindall*, 2025 WL 2690565 (W.D.Ky., Sept.19, 2025); *Singh v. Lewis*, 2025 WL 2699219 (W.D.Ky., Sept. 22, 2025); *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Campos Leon v. Forestal*, 2025 WL 2694763 (S.D.Ind., Sept. 22, 2025); *Giron Reyes v. Lyons*, 2025 WL 2712427 (N.D.Iowa, Sept. 23, 2025); *Santiago Helbrum v. Williams*, 4:25-cv-00349 (S.D. Iowa Sept. 30, 2025); *Hernandez Marcelo v. Trump* (S.D. Iowa Sept. 10, 2025); *Brito Barajas v. Noem*, No. 4:25-cv-00322 (S.D. Iowa Sept. 23, 2025); *Belsai D.S. v. Bondi*, 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Apr. 15, 2025); *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Apr. 27, 2025); *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Aniscasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, 2025 WL 251539 (D. Neb. Sept. 3, 2025); *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Lorenzo Perez v. Kramer*, 2025 WL 2624387 (D. Neb. Sept. 11, 2025); *Oruna Carlon v. Kramer*, 2025 WL 2624386 (D. Neb. Sept. 11, 2025); *Genchi Palma v. Trump*, 2025 WL 2624385 (D. Neb. Sept. 11, 2025); *Duenas Arcey v. Trump*, 2025 WL 2676934 (D. Neb. Sept. 18, 2025); *Rosado v. Figueroa*, 2025 WL

2337099 (D. Ariz. Aug. 11, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379235 (C.D. Cal. Aug. 15, 2025); *Zaragoza Mosqueda et al. v. Noem*, 2025 WL 2951930 (C.D. Cal. Sept. 8, 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Guerrero Lepe v. Andrews*, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Salcedo Aceros v. Kaiser*, 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Maldonado Vazquez v. Feeley*, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Sanchez Roman v. Noem*, 2025 WL 2710211 (D. Nev. Sept. 23, 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Garcia Cortes v. Noem*, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Salazar v. Dedos*, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Gamez Lira v. Noem*, 2025 WL 2676729 (D.N.M. Sept. 24, 2025); *Hernandez Lopez v. Hardin* (M.D. Fla. Sept. 25, 2025). Exhibit E. In decision after decision, federal courts— nationwide—have rejected Respondents’ sudden reinterpretation of the statutory scheme, and have instead held that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

B. The rules of statutory interpretation show that § 1226(a) applies here

Respondents correctly state, “Section 1226 provides for arrest and detention on a warrant ‘pending a decision on whether the alien is to be removed from the United States.’” *See* Resp’ts’ Resp. Br., ECF No. 8. In this matter, Petitioner was arrested by ICE’s New York City Fugitive Operations and CBP officers and detained on a warrant after living in the United States for more than eleven years. *See* ECF No. 1-2.

Sections 1226(a) and 1225(b) work in tandem to cover different categories of noncitizens: § 1226 provides a discretionary detention scheme for individuals who are “already in the country” and are detained “pending the outcome of removal proceedings,” *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018), while § 1225 (including its subsection (b)(2)(A)) is a processing and inspection scheme that applies to those “at the Nation’s borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible,” *id.* at 287. Conversely, § 1226 “authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings.” *Id.* at 289. Indeed, there is a “line historically drawn between these two sections” and the categories of noncitizens they respectively cover. *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025).

This understanding situates each detention provision “in their context and with a view to their place in the overall statutory scheme.” *King v. Burwell*, 576 U.S. 473, 486 (2015) (citation omitted). *See also Biden v. Texas*, 597 U.S. 785, 799-800 (2022) (looking to statutory structure to inform interpretation of INA provision). Placing a provision in its larger context is especially important where the provision “may seem ambiguous in isolation” but can be “clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.” *United Sav. Ass’n of Tex. v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371 (1988). And the one meaning which permits a logical and compatible effect here is that § 1225 and § 1226 each cover different categories of noncitizens.

Section 1225’s plain text shows that it is focused on inspecting people who are arriving or have just entered the United States. *See generally* 8 U.S.C. § 1225(a)-(b), (d). That section repeatedly refers to “examining immigration officer[s],” 8 U.S.C. § 1225(b)(2)(A),(b)(4); sets out procedures for “inspection[s]” of people “arriving in the United States,” *id.* § 1225(a)(3), (b)(1), (b)(2), (d); and discusses “stowaways, “crew[m]en,” and noncitizens “arriving from contiguous territory.” *Id.* § 1225(a)(2), (b)(2)(B), (b)(2)(C). Even the title of § 1225 refers to the “inspection” of “inadmissible arriving” noncitizens (emphasis added). *Cf. Dubin v. United States*, 599 U.S. 110, 120-21 (2023) (relying on section title to

help construe statute). Thus, by its own text, § 1225, read as a whole, makes clear that it is intended to apply to recent arrivals at or near the U.S. border. Petitioner, of course, arrived at the border over eleven years ago and has been residing in the United States since.

On the other hand, § 1226(a) is a separate detention authority that applies broadly to any noncitizen arrested “on a warrant . . . pending a decision on whether [they are] to be removed from the United States.” *See also Jennings*, 583 U.S. at 289 (§ 1226(a) applies to those “already in the country” who are detained “pending the outcome of removal proceedings”). On its face, the provision plainly applies to Petitioner, who was arrested “on a warrant” years after he entered the U.S. and is now detained “pending a decision on” his removal. Thus, § 1226(a), and not § 1225(b)(1), is clearly the proper detention authority for Petitioner.

C. Congressional intent shows that § 1226(a) applies to Mr. Lojano Naula

Congress intended for § 1226 to govern the detention of noncitizens who entered the U.S. without inspection. Congress most recently expressed this understanding earlier this year in the Laken Riley Act. This act added a subsection to § 1226 that specifically mandated detention for noncitizens who are inadmissible under §§ 1182(a)(6)(A) (noncitizens present without being admitted or paroled, like Petitioner), 1182(a)(6)(C) (misrepresentation), or 1182(a)(7) (lacking valid documentation) and have been arrested for, charged with, or

convicted of certain crimes. *See* 8 U.S.C. § 1226(c)(1)(E); Pub. L. No. 119-1, 139 Stat. 3 (2025).

Respondents’ interpretation of the statutes renders this recently amended section superfluous. *Lopez-Campos, supra*. If Congress intended or understood § 1225 to govern the detention of noncitizens like Mr. Lojano Naula, who were apprehended years after entering the country, it would have placed these amendments within § 1225, not § 1226.

Justice Diamond, from the Eastern District of Pennsylvania, states it well, “Further, if all aliens here illegally are already subject to mandatory detention under § 1225(b), then the Laken Riley Act’s recent expansion of mandatory detention under § 1226(c)(1)(E) would also be beside the point. *See* Pub. L. No. 119-1, 139 Stat. 3 (2025). Once again, I am not prepared to render an Act of Congress superfluous.” *See Demirel v. Federal Detention Center, et al., Case 2:25-cv-05488-PD* (November 18, 2025) *referencing* *Stone v. I.N.S., 514 U.S. 386, 397 (1995)* (“When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.”).

When Congress amended § 1225(b)’s predecessor statute—which authorized detention only of arriving noncitizens—to include individuals who had not been admitted, legislators expressed concerns about recent arrivals to the United States who lacked the documents to remain in the country. There is no suggestion in the

legislative history that Congress intended to subject all people present in the United States after an unlawful entry to mandatory detention and thereby transform immigration detention and sweep millions of noncitizens into § 1225(b). *See* H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29 (1996); H.R. Rep. No. 104-828, at 209 (1996) (Conf. Rep.).

D. Long-standing agency practice shows that § 1226(a) applies here

Petitioner’s position is not a novel interpretation of the INA. It has been Respondents’ own understanding of these provisions since they were first enacted thirty years ago—a view they held until suddenly reversing course two months ago in a policy ICE issued “in coordination with the Department of Justice.”

Following IIRIRA, the agency drafted new regulations that provided: “[a]liens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.” Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997). The relevant regulations restrict only “arriving aliens” from an immigration court bond hearing. 8 C.F.R. § 1003.19(h)(2)(i)(B). An “arriving alien” is, as relevant here, “an applicant for admission coming or attempting to come into the United States at a port-of-entry.” 8 C.F.R. § 1001.1(q).

It has long been the Respondents' practice not to detain those who either passed a Credible Fear Interview or were awaiting one. This is best evidenced by the Department of Justice's Settlement Agreement in the Mendez Rojas Class Action out of the Western District of Washington. *See Mendez Rojas, et al., v. Wolf, et al.*, Case No. 2:16-cv-01024-RSM (W.D. Wash.). This action was brought on behalf of asylum seekers challenging the federal government's failure to give them notice of the one-year asylum application deadline. This Settlement Agreement addressed the issue of individuals released by CBP at the border who were not advised of their obligation to file their asylum applications within one year. Many asylum seekers would not know about this obligation until years later, when they were finally placed into removal proceedings.

One of the classes in this settlement was composed of individuals who DHS encountered upon arrival or within fourteen days of unlawful entry, were released by DHS after they have been found to have a credible fear of persecution or torture pursuant to 8 USC § 1225(b)(1)(B)(ii), and did not receive an individualized notice of the one-year deadline to file an asylum application. *See Mendez Rojas Class Settlement Agreement.*

This class dealt with individuals who were released after their positive Credible Fear Interviews, as had been the practice for decades. If Respondents'

practice had been to detain these individuals, their asylum claims would have been adjudicated within a year.

E. Respondents’ conduct in this case suggests they did not view Mr. Lojano Naula as seeking admission

Finally, belying Respondents’ entire defense are the facts surrounding Mr. Lojano Naula’s initial detention: when he was apprehended, the DHS deliberately chose not to check the box designating Mr. Lojano Naula as an “arriving alien.” Exhibit D Notice To Appear. Instead, DHS only checked the box for an “alien present in the United States” and it only charged him with removability under 8 U.S.C. § 1182(a)(6)(A)(i). *Id.*

II. Due Process Entitles Mr. Lojano Naula to a Bond Hearing

Respondents claim that Mr. Lojano Naula is only due the removal procedures provided by Congress. While that may be true for some people apprehended while crossing the border, *see Thuraissigiam*, 591 U.S. at 139, that is not true for people like Mr. Lojano Naula who have resided in the United States and “develop[ed] the ties that go with” that longtime residence, *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). Indeed, there has long been a legal “distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.” *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (emphasis added).

And the process due here is governed by the classic balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 334-335 (1976). Mr. Lojano Naula invokes “the most elemental of liberty interests—the interest in being free from physical detention by one’s own government.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Meanwhile, the government’s interest in detaining Mr. Lojano Naula is limited to ensuring his appearance at future immigration proceedings and preventing danger to the community. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). But because Respondents denied Mr. Lojano Naula a proper bond hearing, “there is nothing in the record demonstrating that [Mr. Lojano Naula] is a flight risk or a danger to the community.” *Lopez Benitez*, 2025 WL 2371588 at *12. Therefore, the risk of erroneously depriving Mr. Lojano Naula of his physical freedom is unbearably high. *See id.* Without the bond hearing that he is entitled to under § 1226(a), Mr. Lojano Naula will never be able to present the compelling reasons that he is neither a flight risk nor a danger. Due process thus requires that Mr. Lojano Naula be afforded a bond hearing under § 1226(a). *See Lopez-Campos, supra.*

If the Court agrees in over 200 cases across the country, including several in this district, that 1226(a) applies, then there is also a Due Process violation because the Petitioner is subject only to discretionary detention and therefore should have access to a bond hearing. *See Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC

(EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Salazar v. Dedos*, No. 1:25-CV-00835-DHU-JMR, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Oliveros v. Kaiser*, No. 25-CV-07117-BLF, 2025 WL 2677125 (N.D. Cal. Sept. 18, 2025); *Beltran Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Singh v. Lewis*, No. 4:25-CV-96-RGJ, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Rivera Zumba v. Bondi*, No. 25-CV-14626 (KSH), 2025 WL 2476524 (D.N.J. Aug. 28, 2025); *Contreras Maldonado v. Cabezas*, No. CV 25-13004, 2025 WL 2985256 (D.N.J. Oct. 23, 2025); *Pablo Sequen v. Albarran*, No. 25-CV-06487-PCP, --- F. Supp. 3d ----, 2025 WL 2935630 (N.D. Cal. Oct. 15, 2025); *Contreras-Cervantes et al. v. Raycraft, et al*, No. 2:25-CV-13073, 2025 WL 2952796 (E.D. Mich. Oct. 17, 2025); *Sanchez Alvarez v. Noem et al.*, No. 1:25-CV-1090, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025); *Soto v. Soto*, No. 25-CV-16200, --- F. Supp. 3d ----, 2025 WL 2976572 (D.N.J. Oct. 22, 2025).

Importantly, Respondents contend that Petitioner’s detention is not unreasonably prolonged, citing that other courts in this District have held that detentions under § 1225(b) considerably longer than Petitioner’s detention were not unreasonable. In the same breath, Respondents concede that whether a detention is unreasonably prolonged is a “highly fact-specific inquiry” without a bright line. The problem with this argument is that Petitioner is not lawfully detained under § 1225(b); if he were, we would not be here. Petitioner is

unlawfully detained under § 1225(b). We contend that any period of unlawful detention is too long

If the court finds that 1225b applies, Petitioner is still entitled to due process. First, as mentioned above, *Thuraissigiam* does not control here because that case was about due process as to procedures for admission into the United States, which the Supreme Court said Congress has the prerogative to set. But, due process as to detention is fundamentally and the Supreme Court has set clear limits on civil immigration detention. *See Zadvydas*, citing *Salerno*, *Addington*, *Foucha*.

CONCLUSION

Petitioner respectfully request that the Court grant Mr. Lojano Naula's petition for writ of habeas corpus because he is detained in violation of federal law or the Constitution. Petitioner further requests that this court order his immediate release from custody. Respondents were given an opportunity to provide Petitioner with a bond hearing, but chose not to do so.

Dated: December 8, 2025

Respectfully submitted,

/s/ Paul Grotas

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Certificate of Service

I hereby certify that on December 8, 2025, I electronically filed the foregoing paper with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record.

/s/ Paul Grotas

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